

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

MEMORANDUM AND ORDER

This matter is before the Court on the motion of defendant City of St. Louis to strike plaintiff's prayer for punitive damages in Counts II and III of his second amended complaint. Plaintiff opposes the motion and the issues are fully briefed.

In an order dated May 4, 2009, the Eighth Circuit remanded this action for further proceedings on plaintiff's claims under the Americans with Disabilities Act (ADA) of 1990, 42 U.S.C. §§ 12131 *et seq.*, and the Rehabilitation Act (RA) of 1973, 29 U.S.C. §§ 701 *et seq.* In Count II and III of his second amended complaint, plaintiff alleges that City violated the ADA and the RA. Additionally, plaintiff complains that “[t]he deliberate and callous indifference shown by [City] warrant[s] an award of punitive damages” for violation of both statutes. (Doc. #35, at 8, ¶ 46; at 9, ¶ 59).

Discussion

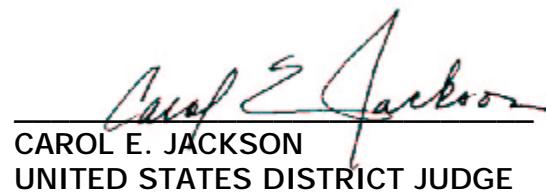
A motion to strike under Rule 12(f) may be used to strike any part of the prayer for relief when the damages sought are not recoverable as a matter of law. Bureerong v. Uvawas, 922 F. Supp. 1450, 1479 n.34 (C.D. Cal. 1996) (citing Tapley v. Lockwood Green Engineers, Inc., 502 F.2d 559, 560 (8th Cir. 1974)).

In the instant case, plaintiff seeks punitive damages from defendants pursuant to § 202 of the ADA and § 504 of the RA. (Doc. #194, at 2). The United States Supreme Court has held that "punitive damages may not be awarded . . . under § 202

of the ADA and § 504 of the Rehabilitation Act." Barnes v. Gorman, 536 U.S. 181, 189 (2002). Thus, there is no basis on which plaintiff may recover punitive damages under the ADA or the RA. As such, the Court concludes that plaintiff's prayer for punitive damages in Counts II and III of his second amended complaint will be stricken.

Accordingly,

IT IS HEREBY ORDERED that the motion of defendant City of St. Louis to strike plaintiff's prayer for punitive damages [Doc. #189] is granted.



CAROL E. JACKSON
CAROL E. JACKSON
UNITED STATES DISTRICT JUDGE

Dated this 20th day of July, 2009.